

The case Newfoundland and Labrador (Attorney General) v. Uashaunuat (Innu of Uashat and of Mani-Utenam)



PRESENTED BY

Marie-Claude André-Grégoire, Counsel

O'Reilly et associés

Precedence of Aboriginal title over the application of the Civil Code of Québec and interpretation of competence of the Québec courts

André-Grégoire looks at the Supreme Court's recognition of the *sui generis* nature of Aboriginal rights and Aboriginal title (formerly "Indian title"). This 2020 decision constitutes a major advance for the application and interpretation of the rights of Canada's Indigenous peoples.

Use of the land without consent: respect for Aboriginal rights at the heart of the dispute

The Innu are a historically nomadic people occupying the north shore of the St. Lawrence. Traditionally, they used other rivers to travel to their family lands in the fall, including the Mestashibo which crosses the boundary between Québec and Labrador. Starting in the 1940s, and without having consulted or even informed the Innu, the company concerned erected various facilities for the purpose of mineral extraction, devastating their territory and traditional lifestyle.

In 2013, court proceedings were launched by the Innus of Uashat and Mani-Utenam to obtain fair compensation. Two main points arise from the proceedings. (1) The mining company IOC contested the need to recognize Aboriginal rights, but its argument was rejected by the Superior Court because of constitutional protection for Aboriginal rights (s. 35); leave to appeal was also denied by the Court of Appeal and the Supreme Court. (2) To counter the Innu challenge to the boundary between Québec and Newfoundland and Labrador, IOC and Newfoundland and Labrador claimed that the Québec courts did not have jurisdiction to hear the part of the dispute concerning Labrador and asked for that portion to be struck from the case. This request was denied by the Superior Court, the Court of Appeal and the Supreme Court, which found that it was unfair to split the case into two, based on the occupation of the land by the Innu before the boundary was created.

Aboriginal title and Aboriginal rights recognized as *sui generis* rights

The decision made an important step towards the recognition and protection of Aboriginal rights in Canada. The Supreme Court recognized the *sui generis* (unique) nature of Aboriginal title and Aboriginal rights. It also highlighted the importance of not conflating Aboriginal title and Aboriginal rights with the real, personal or mixed rights of the legal system when, in a dispute, Aboriginal rights are asserted. In fact, the *sui generis* nature of Aboriginal rights requires them to be considered apart from the strict notions of property law and the traditional notion of ownership defined in the *Civil Code of Québec*.

Impact on the application and interpretation of Aboriginal rights across Canada

This decision by the Supreme Court of Canada has had an impact on the interpretation and application of the rights of Indigenous peoples across Canada, since other Indigenous land claims cross boundaries, in particular between Canada and the United States. In this area, the Supreme Court concludes that (1) federalism must take into account the unique (*sui generis*) constitutional status of Aboriginal rights in Canada, (2) when a case involves the rights of the Aboriginal peoples, strict civil law concepts must be applied and interpreted flexibly to guarantee the rights of access of the Indigenous peoples, and (3) the Indigenous peoples must be able to assert their constitutional rights fairly in order to have access to fair and effective reparation when a dispute arises.



Centre de recherche interdisciplinaire
sur la diversité et la démocratie **cridaq**



Groupe de recherche
sur les **sociétés**
pluri-nationales

SSHRC CRSH